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November 27, 2006

Gregg J. Corbo, Esq.
Kopelman & Paige, PC
101 Arch Street, 12th Floor
Boston, MA 02110

Re: Waters v. Town of Ayer et al., No. 04 Civ. 10521

Dear Mr. Corbo:

I write in response to your letter dated November 17, 2006. With respect to the privilege log associated with plaintiff's November 10, 2006 Supplemental Rule 34 Disclosure, you argue that the assertion of attorney work product privilege is inappropriate because the mental impressions of Mr. Waters' criminal defense attorneys is allegedly "the central issue in this case." While plaintiff's *Brady* claim has arguably placed a narrow scope of attorney work-product at issue – and as such we will produce certain documents identified below – the *Brady* claim does not vitiate the privilege as to all work product. In the context of attorney-client privilege, courts have recognized that "[a]n 'at issue' waiver, in circumstances where it is recognized, should not be tantamount to a blanket waiver of the entire attorney-client privilege in the case." *Fed. Deposit Ins. Corp. v. R.W. Beck, Inc.*, No. Civ.A.01.-CV-11982RGS, 2004 WL 1474579, at *2 (D. Mass. July 1, 2004) (quoting *Darius v. City of Boston*, 433 Mass. 274, 283 (2001)). As a result, "a court is obligated to craft its order in such a way 'so as to limit the permissible discovery to what is truly 'at issue'" *Id.* (quoting *Darius*, 433 Mass. at 283).

With these principles in mind, your request for a broad disclosure of all work product, even by Mr. Waters' post-conviction attorneys, is overbroad and unreasonable. Plaintiff's *Brady* claim alleges that the failed to disclose exculpatory evidence to the prosecutor and Mr. Waters' trial attorney, Bernard Bradley. At most, plaintiff has arguably placed at issue Mr. Bradley's underlying knowledge concerning the exculpatory evidence at the time of the trial. As such, plaintiff only acknowledges that work-product privilege may be waived with respect to documents reflecting the mental impressions, conclusions, opinions, or legal theories of Mr.

Bradley prior to Mr. Waters' conviction. Therefore, plaintiff hereby discloses Mr. Bradley's pre-conviction correspondence or notes that you identified in your letter, without waiver of any other privileges.

Sincerely,

A handwritten signature in black ink that reads "Monica R. Shah". The signature is written in a cursive, flowing style.

Monica R. Shah

Enclosures

cc.: Rob Feldman, Esq. (w/o encl.)

I lived w/ Ager w/ Grandfather during years December 79 - Jan 1980 stage until left go R.I. -

* Left Ager in 1980 because he lost job - gave address to P.O. office in Ager D.C. When went to Providence he was on probation in R.I. - then Ager case was trans. to R.I.

Scene on Rosewood Ave. -
500 yds from D.C. address.
Trailer in which I lived.

5/2/81 does not know time -

On 5/2/1980 I in Ager D.C. in front of J. Williams. came on self with ex girl & child. chgd w/ P+B on P.O. -

went to Park St Diner - saw boss (?) name talked heard Ager saw cruiser go by Diner around lunch. (gave) talk about cruiser speed -

I called wife pick me up.
she did

Went home - went right by the trailer
~~passed~~ + went home. thought fight

Uncle came in Jan spoke w/ Mr. Brown
 been murdered - may have been 4³⁰ 5⁰⁰

Police came next day. St. Beauteau
 to station at least twice.

Dad he would take a polygraph -
 set up. D went to Prov R.I

D took a Voice Stress Test at
 station by St. Beauteau administered
 the test. D've 2nd time at station.

Whole time knew that it

Brenda Marsh & I lived together for
about 5 years had one child by
her -

continued to live together -
she not getting along w D's grandfather
" so he was real - tough -
" went back to Worcester - I lost job &
was drinking -

continued to see her - got job with brother
got apt for father-in-law &
Brenda moved to Paw R.I.
lived together about 1 month
I drinking - she left about 3 mo after
the killing or longer
she kept coming down kept talking I
went for alch. program at Brockton V.A.

Later Aug 1980 she came to rent
bath & 15 other people went fishing
I drunk got into big fight she
had been arrested for assault I leave
next A.M. skip chopper - never saw
her again -

Uncle saw a guy around the
house wht day the Romeo Collard-
lives in Shirley
Uncle name Benny Davenport Jr.
7 Vernon St. Ayr.
is a gay lives with friend
Uncle works with him (Romeo) at
Gorton Paper Mill

1st ago Romeo's inf. com. suicide w a shotgun
1st after he bought brand new car

~~Romeo~~

Benny may have told May Jarvis
Fitchburg
of ~~seeing R~~
guard of D's mother

Eugenie Brown

Eugenie Brown Deermolen Grafton
 Her mother-in-law
 710 Rosewood Ave Ogle

Two photos E₂ 2+3 9# trailer truck
 reference #40A - 41

Feb 1980 linen closet
 best camera towel envelope
 fell to floor it contained \$
 multiple "100 bill — 1800

did not trust banks money
 and going to Germany

Saw money again at Park St Pine
 she had money with her
 towards end of March or 1st of April
 when initially

2 days after death went to home
 went thru linen closet floor money
 gone money & pocketbook

Photo series closet #28 on floor
#14

Denver - 5-21-PC
went to scene 11 A.M. got there
entered porch - small kitchen saturated
with blood bedroom saturated

Kitchen Area #30 Ex # 6
Kitchen " #13 Ex # 5
B.R.

closet -

Kitchen eating area - #37 Ex 7

Kitchen to the ~~closet~~ #14 Ex 8
living area

four up on floor slab marks all over
floor body

Eight photos -

✓ for bed #5

✓ " " head section #1

another section #5B

" "

" "

5A

1V

9

✓ head
 ✓ arm & forearm 20
 ✓ shot under hand 17
 9
 16

camp broken started #2
 after camp in not broken #34
 Toaster #15
 #17
 #18
 #19

Photo Knife found in evidence shot 33 #26
 " " #21

Time Ceyar PD Time State got there 10³⁰ - 11⁰⁰
 Ceyar Police called 7-8 AM

cannot recall where talk with D took
 place

subsequently he has left area
 accord to informant

Brenda Marshall 7-14-57
 live Worcester all life

in 1980 lived in Ayer & Providence
 w/ Dad he was boy friend

lived in Wore. close to 3 yrs
 went to Ayer 7, Vernon & grandfather
 lived 1 month moved
 sometime in May before 5-21-80

D worked Pub & Diner as cook

May 21 something happen? V dead
 seen all cruisers 10³⁰ - 11⁰⁰
 Parent & brother
 D sleeping

Night before supposed to coming
 left sometime 11 sometimes later

came home 5:06 in morning sometime
 earlier

seen him 10³⁰ little earlier
 he went to sleep N. TALK

Drew cruises 1/2 later

woke up so there was police
cruisers in neighborhood

* Do you want to go down there

I did go with Police

came back so going to R.I. —

* If I'm being blamed for something
I did not do

Stayed with father on Court St.
for 1 month —

Left Prov in July about 3 weeks
after birthday

Back to 5/21/80

I had been drinking drinks
evening white shirt & pants
some clothing

SCRATCH on left cheek

other station maybe might have -
been Ford

all her clothes in car - tooth
soda bottles -
how get scotch none business

* talked about women up away in house.
I guess she was going high to
Jimmy - I'd like to have
the Jimmy

in area no other trailers in area
D never up to trailer

* Swimming Pool

birth July - just after birthday
fight
he had gone out
" some fuck had been drunk
dumped her we guy had
hit me with plastic bag

See

Only once

have not seen D until ~~today~~
Sept of some year

later day —

Knife

used by D at Global Ken Lines

Who is Gene Kelly I do
not know

Susan Harman - lives in neighborhood
knows her

Cookie (Carolyn) was married to Gary Costello - dealer

Thomas Luby (in Court day of murder)

ADJ is waitress at restaurant
told I Mrs Brown he told
her that someone was following her
& afraid of life

DEBIL

Homicide

KNOWN

IT OCCURRED SOMETIME
TWO¹⁵ 7 AM AND TIME OF
DISCOVERY BY DAUGHTER-IN-
LAW AT ABOUT 10:45 AM

REAR DOOR FOUND "OPEN"
(NOT UNUSUAL)

FRONT DOOR FOUND "OPEN"
(VERY UNUSUAL)

FOOT SAMPLES FOUND ON
TODEN STEPS OUTSIDE
FRONT DOOR "NOT VICTIM'S"

INTERIOR NOT RANSACKED
LEFT FOR LINEN CLOSET
WHERE VICTIM KEPT MONEY
IN ENVELOPE

VICTIM BLOOD - B-POS.
ASSAILANT " - O

EVIDENCE OF FIERCE
BATTLE IN KITCHEN &
DINING ROOM AREA,
BEDROOM WHERE VICTIM
FOUND

VICTIM'S POCKETBOOK IS
MISSING. SUPPOSEDLY HAD
LARGE AMOUNT OF MONEY
IN SAME.

SUPPOSEDLY "NO CREDIT
CARDS"

KNOWN

"EARLY" TRUCK DRIVER
HAS STATED HE SAW
A "GREEN" VEHICLE IN
YARD OF VICTIM'S HOME
BETWEEN 6:45 AM 9:15 AM
DAY OF MURDER

BEB 10:15 10/14/82

E. Fahey called (494-4618)

She was advised by Ayer
N.C. that you have been
appointed as counsel to
Kenneth Waters charged
with murder. He was
arrested on 10/13, there is
a bail petition hearing 10/14.
In Ayer D.C. continued to

10-12-87 Providence RI & V.

Did You know Mrs Brown:

1. Re I went to school with Charlie. he so I've seen her down the
have you ever been in there house.

I don't know maybe I broke into every house in the area when
I was a kid.

Refused to look at pictures of murder looked at 2 or 3
and then then down turned his head and said who ever did this
was sick

~~when~~ when were you on the night of the murder or the morning
of the murder did you work the night before

I got drunk the night before because I had to be in court
the day of the murder. MY GIRL friend will verify that her
name is Brenda Ward and his name when in Worcester.

were you a heavy drinker -

Yes I drank alot and was doing drugs
what kind of drugs were you doing.
mostly speed and some marijuana.

Did you ever have Black out when you did all this drinking
and drugs.

Sometimes.

It possible that you could have done this in one of your Black
out stages.

Maybe I don't know no, no I don't think I could have done anything
D.

KENNETH WATERS CALLED

NOVEMBER 30, 1982

3:30

HE GOT ONE OF THE PERSONS HE USED TO WORK WITH ON GLOBAL VAN LINES...

HIS NAME IS EVERETT LAPORE, 57 PRESTON STREET, SHREWSBURY, MASS.
TELEPHONE 842-6347

DETECTIVES HAVE ALREADY QUESTIONED HIM ABOUT CASE AND ABOUT THE KNIFE
AND TRIED TO GET HIM TO SAY THAT WAS KNIFE HE HAD. HE TOLD DETECTIVES
IT WAS NOT...

SAID HE WOULD BE WILLING TO TESTIFY...



GERARD F. SCHAEFER
CHIEF COUNSEL

The Commonwealth of Massachusetts
Massachusetts Defenders Committee

189 Cambridge Street, Cambridge 02141

TELEPHONE:
(617) 868-3300

February 2, 1983

Mr. Raymond Morgan
Morgan Investigations
4 Longfellow Place
Boston, Mass., 02114

Dear Ray,

I enclose a copy of the latest police report from Ellie Fahey. Seems to me they are really fishing but maybe you should talk to this guy and to Kenneth's brother Leroy.

Sincerely,

Bernard E. Bradley
Regional Supervisor

March 29, 1983

Mr. Ray Morgan
Morgan Investigations
4 Longfellow Place
Boston, Mass., 02114

Dear Ray,

I received the enclosed today and I am wondering about the
adviseability of checking the records of this complex in
Worcester to see if the defendant and Brenda and these
witnesses actually lived there at the same time.

Very truly yours,

Bernard P. Bradley
Attorney at law

BBB/bh
Enc.

P.S. What about the swimming pool? Have we found that yet?

February 25th, 1983

Mr. Ray Morgan
Morgan Investigations
4 Longfellow Place
Boston, Mass., 02114

Dear Ray,

No wonder I had so much trouble getting this report...

Sincerely,

Bernard E. Bradley
Attorney at law

PEB/bh
Enc.

1982

Kenneth W. Waters

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Oct. 14 Barbara Hodgkins, Secy.

This date received notice from Ayer District Court that our office had been appointed to represent D charged with 82-2026, murder; and 82-2027, armed robbery. Case continue to OCTOBER 20, 1982, QUESTION OF COUNSEL.

D PRESENTLY AT BILLERICA H OF C.

DOB: 8/16/53

D's address: 28 Erie Street, Providence, Rhode Island

Case assigned to Bernard E. Bradley.

Oct. 18 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 10/18/82.
Saw D today very briefly. Says he did not kill the lady.

I spoke briefly and off the record with Jack Dwyer who investigated this for the state police. He said that he wished they had not moved so quickly, referring to the DA's office, that they had more work they wanted to do and that they knew where the D was and that there would be no problem in picking him up. He said that this D was a suspect earlier on and that he agreed to take a poly-graph but when the poly-graph was setup the they went to his home in Ayer the D was gone and they did not know according to Dwyer where he was.

In relationship to that the D said that he lost his job, that he moved to Providence, Rhode Island his original home and since he was on probation he left his new address with his probation officer.

He asked me to call his sister, Betty Ann Correntte, 11 Mozart Street, Cranston, Rhode Island. Telephone 401-942-2904.

Oct. 20 Bernard E. Bradley, Atty.: Shirley M. Roderick, Secy., Dict. 10/20.
Two of D's sisters were in the courtroom. Case continued to November 5, 1982 for probable cause.

Oct. 18 Bernard E. Bradley, Atty: Barbara Hodgkins, Secy. Dict. 10/19/82.
Had a brief initial interview with him at BHC. At the time of the murder, he lived with his grandfather in Ayer some 500 yards from the trailer where the victim lived. Her trailer was located on Rosewood Avenue. He stayed there from sometime in December of 1979 until he left Massachusetts in 1980. He left Massachusetts because he lost his job. The murder took place on May 21. He does not know the time on the 21st of May. He was in the Ayer District Court in front of Judge Williams. He was charged with an A&B PO. After that he went to the Park Street Diner where he was working. Saw and talked to his boss whose name he doesn't remember. They heard the siren and saw the cruiser go by at a high rate of speed. They thought there may have been an accident. He called his wife to pick him up. She did. When they went home they went right by the trailer and said it was loaded with police. He thought there may have been a fight. His uncle Bennie (?) said Mrs. Brow had been murdered. The police came to him the next day. He was taken to the station at least twice and interrogated. He said he would take a polygraph. He did take a voice stress test that was administered at the Ayer police station. On his second appearance he said he said he "passed it". By the time the poly graph had been setup the D had moved to Providence. Brenda Marsh, the girl that maybe the fink and the D lived together for about 5 years. They have one child, a daughter about 3 years old. They were living in his grandfathers house. She and the grandfather did not get along. D was drinking and she returned to Worcester. Through the D's brother-in-law, he got an apartment in Providence. Brenda went with him, stayed about a month. She left again because of his drinking. She

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Oct. 18 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 10/18/82.
 (cont) apparently left on Labor Day of 1980 after a fishing trip. D got drunk, got into a big fight with her. She had him arrested and charged with assault. In the morning she dropped the charges and he has never seen her again. During this period of time D said he went to Brockton VA Hospital in their alcohol program.

The D has an uncle named Bennie Davenport. He lived at 7 Vernon Street, Ayer. He is gay. He lives with a friend. The uncle said that on the day of the murder he saw one Romeo Collard who lives in Shirley at the victims trailer. The uncle worked with Romeo at the Groton Paper Mill 12 years ago. Romeo wife committed suicide with a shotgun and right after that he bought a brand new car. Bennie will not say anything because he is afraid his gay background will come out, but he may have told a friend of the D's mother, one May Jarvis of Fitchburg hoping that she would spread the word.

Told the D I would see him tomorrow in Ayer.

Nov. 2 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 11/2/82.
 Saw ADA Fahey. She gave me copies of transcription of Brenda Marsh's testimony.

Nov. 4 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 11/4/82.
 Checked Ayer DC this morning. He was in court on the day of the murder on complaints 706 and 707 of 1980. I think they are Assault P. O. They will have certified copies for me tomorrow.

There is no evidence that he left a forwarding address of Providence, R. I. with his probation officer.

He said that he did carry a knife when he worked with the Global Van Lines, but he said it was more of a tile cutter and they used it for opening cartons and cutting sealing tape. He said that that is the knife he had when he was arrested. He was arrested at his mothers in Providence, R. I. in the house in which he was living. He is unsure of the actual moving around of himself and Brenda, but he did say that Brenda and the two kids and the D were living with his grandfather Benjamin Davenport. The grandfather hated Brenda because she was so dirty. The D said he then left and went to Providence. He doesn't know when, maybe July. He thinks that Brenda returned to Worcester in her apartment at 1 Upton or Uplan Gardens a couple of weeks afterwards. The D got an apartment through his brother-in-law, Betty Ann's husband. They stayed together for some two or three weeks. They never got along. She took the kids and went to Worcester and it was about that time that the children were taken from her by the Welfare Department, apparently because of her neglect and dirty habits. The little girl had magots. He said that on labor day when he found this out, I think labor day of 1980, there was a tremendous fight over it and he did punch her out. The police were called. He was arrested for assault, pleaded guilty and the case was filed.

The D told me that Brenda had said she would get him if he ever left her. She made that threat to his ex-wife Michelle.

Talked also with the sister Betty Ann. She tells me that the kids and Brenda did live in the apartment that her husband got for them on Unid Street. The D then got an apartment for Brenda and asked her to leave. She did not live in the apartment, but rather lived in a van that she had with the children outside the D's apartment. Betty Ann thinks this is when the little one became infested with the magots.

A man named Osborn who originally called the police with Brenda's statement, is now apparently her boyfriend, but until recently was married to her sister.

CPCS000004

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Nov. 5 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 11/5/82.
Picked up certified copies of complaints. D was actually in court on the day of the murder, but the complaints do not show the time. I later picked up his waiver of right to a jury trial signed by him on that day.

The PROBABLE CAUSE hearing was recorded by a stenographer brought by the Commonwealth. It was before J. Rowe. He has ordered a copy of that transcript for me.

The evidence as indicated at the probable cause hearing is very simply that the D's ex-girlfriend after two years, said that when she asked the D if he "killed that woman?" he is supposed to have said, "yeah, so what". She was shown a knife which was found in a waste basket and positively identified the knife as being that of the D. However there is not one single special identification mark on the weapon. It could be one of a 1,000. Judge Rowe, however did bind the D over.

His mother was in court, his sister and his ex-wife Michelle and her sister-in-law and mother-in-law put together some dates as to when Kenneth was and was not in Ayer and put some dates together which may contradict the testimony of his ex-girlfriend.

I asked Elizabeth Fahey if she had a copy of a statement taken by the police. She said the only thing they have is a hand written set of notes which I have marked "A" for my own use. These notes were taken by the former Chief Adamson. There is a statement somewhere that he gave to Nancy Taylor I have not yet received it.

Nov. 10 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 11/10/82.
Was at Billerica to see another client. D wanted to see me. He just wanted to talk generally, nothing specifically.

Nov. 18 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 11/18/82.
On today for arraignment on 2 indictments. Pled guilty, case continued until DECEMBER 2, 1982 FOR MOTIONS.

At bail hearing D's bail set at \$250,000 or \$25,000 cash.

Dec. 2 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 12/2/82.
On today's list. Motion for Appointment of Investigator allowed up to \$500.00. ~~Governments motion for Blood and hair sample not objected to by the D himself and~~ allowed.

CONTINUED TO DECEMBER 30, 1982 FOR FURTHER MOTIONS AND CONFERENCES.

Dec. 30 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 12/30/82.
Continued to JANUARY 17, 1983 FOR CONFERENCE.

1983

Jan. 14 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 1/24/83.
Conference with Ray Morgan. He spoke with D on the 13th. Reveiwed required investigation. Ray has suggested a polygraph by Joe(?) Murphy, it would cost \$200.00.

Jan. 17 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 1/24/83.
D desired a 2nd polygraph exam. Said family would pay \$200.00

Jan. 18 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 1/24/83.
D called. Ok on polygraph. Called Billerica to setup polygraph exam for Monday, January 24, 1983 at 10 - 11 a.m. Picked up copy of polygraph of Brenda Marsh.

Jan. 20 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 1/24/83.
Saw ADA Fahey. Requested she take D off jail list for Monday, January 24th. She

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Jan. 24 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 1/24/83.
 ADA Fahey told me that FBI could make no determination from blood sample. Expects to have a report on hair within 3-4 days.

CONTINUED TO FEBRUARY 1, 1983 FOR FURTHER CONFERENCE.

Mailed copy of polygraph report re: Brenda Marsh to Ray Morgan.

Feb. 1 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/1/83.
 D on for status.

Polygraph given by Mr. Murphy to the D. Was passed with a very high score. Murphy recommends doing one for real.

Spoke to D relative to polygraph, what it meant and how it could be used. We talked about his extensive record and what that might do to him if he were to testify. He decided not to take the polygraph, his thinking, with which I agree, is that his record is so bad that even a polygraph would not be able to pull it out.

CASE CONTINUED UNTIL MARCH 28, 1983 FOR TRIAL.

ADA Fahey to get assignment from the chief justice.

Feb. 2 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/2/83.
 Received from E. Fahey a report from the Ayer police taken from a man named Joseph Kenadek, sole purpose being to show D carried knife and assaulted people. Copy this day sent to Ray Morgan.

Feb. 4 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/4/83.
 Saw Mary Treacy this day. D on list FEBRUARY 8, 1983 for hearing on polygraph motion.

Feb. 8 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/10/83.
 A motion for polygraph at the D's request allowed. ADA Fahey wants to have a David Raskin from a college in Utah do it. I told her I had no objection.

Feb. 10 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/10/83.
 Received notice from Mr. Phil O'Toole, Clerk in Worcester Superior Court informing me that J. Travers* has been assigned to the D's case.

D called today. He is concerned about a ring that Brenda said he tried to sell sometime after the murder. He called today to inform me that he did in fact try to sell a ring, but it was sometime before the murder. It was a ring he had stolen from Global Van Lines when he was working there. The girl he tried to sell it to was a Cindy LeClair. He does not know where she lives, but recently married a man who owns a jewelry store. He said it was after trying to sell this ring that he was fed up with Worcester and came to Ayer. He said that he did not return there and that Brenda used to take the bus from Worcester to Ayer to stay with him. Brenda joined him in Ayer about one month before the killing.

D has mentioned this ring on several other occasions.

Feb. 14 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/15/83.
 Ray Morgan gave me the polygraph done by Mr. Joseph Murphy. In file.

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Feb. 16 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/16/83.
We talked further today about the lady named Phyllis Loring. She apparently is a very well thought of lady in Ayer and this lady took a particular interest in the D's grandfather. She used to call every single day and she would stop in to see him every day to make sure that he had his breakfast and was feeling ok. On the day of the murder, she went to visit him. Neither the D nor Brenda were home. The grandfather had informed her that Brenda was with the D in court. This of course directly contradicts her probable cause testimony. He also mentioned something to me today and it is something I missed. That when he gave his report to the police the day after the killing, he gave them his Providence address which seems to blunt the prosecutions theory that he ran away. On the morning of the killing the D came into court early and found that the doors leading into the courtroom were locked. This was very unusual. Officer Decoe was standing with the D and he was kiddingly saying something about "we will have to shoot our way in" when the court officer Marty Silva came. He opened the doors and told the D and Decoe they were locked because someone had tried to steal the tape system the night before. Also on that morning Brenda was there with the kids, I think the two of them, she was asked to leave the courtroom with the kids because they were making so much noise.

Feb. 25 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/25/83.
Received call this date from Elizabeth Fahey that a copy of the FBI report was at the front desk at the courthouse for me. Went over and picked up same which is in the file. Also this date, sent a copy to Ray Morgan.

Feb. 28 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 2/28/83.
Contacted Thomas Wade, Chief Supervisor, Adult Probation, Providence, Rhode Island. Telephone 401-277-3496. He will sent me what information he can pertaining to D and the dates of his transfer of probation from Massachusetts to Providence.

Mar. 1 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/1/83.
Received a call from Elizabeth Fahey. Professor Raskin will be able to do the polygraph apparently on Sunday, March 6th, 1983. He is flying in sometime Saturday. She will get his schedule and notify me and we will meet with him.

It also appears that J. Traverse has been assigned by J. Mitchell to try another murder case starting on the 28th of March, 1983. Elizabeth Fahey will have to straighten that out.

Mar. 3 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/3/83.
Had a talk today with D at Billerica, mostly about the witness the government expects to come in from Germany, Adie August who is an elderly lady somewhere around 80. She worked in the diner for 18 years or so, knows everybody's business, talks about everybody's business and is kindly known as the local character. She lives in a trailer park very close to the D's grandfather's house. She, on many occasions, drove the D home. Adie is the local president of the gossip league. Knows everything about everyone. She is supposed to have said to the D on several times "I know who did it". He kept telling her to go to the police, but she did not. She also told the D that the victim was afraid for a long time prior to the killing. At least on one night, she was so afraid of someone that she stayed at Adie's trailer rather than go home.

The D's sister-in-law, Pam Waters, who is married to the D's brother John will be able to testify as to a threat made by Brenda against the D after the D and Brenda broke up and left Ayer. They went to Providence and for a period of time the D had a place just off of River Avenue - he doesn't remember the name of the street. He had it for 3 or 4 weeks, they were still fighting and that is the time she left him and went to Worcester. He took all of the furniture and all the stuff they had accumulated out of that apartment and put it in his brothers apartment at 25 Unit Street, one day maybe in August or September, he wasn't sure when, he thinks it was after their final

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Mar. 3 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/3/83.
CONT. fight on labor day, she came to Pam's apartment with four Providence cops, and said she was going to move all of the furniture that they had out. Pamela told her Ken said she was going to take nothing. The police at that time told her she could take only her personal belongings. Brenda is supposed to have said in front of the police and Pamela "I will get him for this no matter how long it takes."

The reason the D and Brenda left Providence is because they were deeply involved in the food stamp fraud that was going on there. Ken, Brenda and her stepfather and Ken's brother was in it. The FBI made a couple of arrests. The D left before he was involved. Two people were arrested, but did not mention names.

PHYLLIS LORING resides at 1 Mark Street. She is the woman who used to visit the D's grandfather every morning. She is the woman who can testify on the morning of the killing when she went to the house, the D was not there, neither was Brenda or the children.

Mar. 3 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/4/83.
Received a call from Joe Murphy the examiner who administered the polygraph to D. He informed me that Raskin, who I agreed to have examine the D is one real son-of-a-bitch. Joe said he is filled up with his own importance, really doesn't believe too many people and says that he is really a repulsive guy to deal with, disliked intensely by all who know him in the American Polygraph Association. He suggested I tell the D what type person he is and advise the D not to be fearful of him or impressed with his remarkable abilities that Joe says he will tell the D about.

Mar. 4 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/4/83.
Talked with D. Told him about Raskin. He said he isn't worried. Said he won't be impressed by him, just be at ease and tell the truth.

Raskin is coming in Saturday night the 5th of March. ADA Fahey will drive him to BHC Sunday morning and I will pick him up about noon and take him to his hotel.

March 6 Bernard E. Bradley, Atty.: Shirley M. Roderick, Secy., Dict. 3/9.
I picked up Raskin at Billerica. D did not do well on the exam. Raskin showed some concern and blames poor showing on prior tests. Raskin understood that there was little evidence of D's guilt. He was going to suggest to ADA that Brenda be examined re: her story on morning of killing. Spoke to D while there in presence of Raskin.

March 7 Bernard E. Bradley, Atty.: Shirley M. Roderick, Secy., Dict. 3/9.
Spoke to ADA Fahey. She wanted agreement to introduce whatever result of Brenda's polygraph exam. I refused.

March 8 Bernard E. Bradley, Atty.: Shirley M. Roderick, Secy., Dict. 3/9.
Spoke with Pam Waters. She verified the episode involving Brenda and Providence police and her threat. She also told me that shortly after the return of D and Brenda to Providence the family was talking about the killing and Brenda said, "He (D) didn't do it he was in Court with me."

March 18 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/18/83.
Ellie Fahey called today. Says that she has to have a continuance because she is just wrapping up a rape case that will not finish until the middle part of next week. I told her I would not agree to it.

We went to see J. Connolly, who has been assigned to hear this case on the 28th of March. Ms. Fahey requested a months continuance, I opposed any continuances. J. Connolly gave her until April 11th 1983 for trial. He does not know whether

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Mar. 18 Bernard E. Bradley, Atty.: Barbara Hodgkins, SEcy. Dict. 3/18/83.
DEFENDANT'S NEW TRIAL DATE IS APRIL 19TH, 1983.

Mar. 24 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/25/83.
Talked to D on phone. He said that about the time of his arrest, Betty Ann, his sister and his wife Michelle went to the diner in Ayer. They were informed that his time slips were there, they were in a box in the safe with the others, but they would need a court order to get them. This is in response to my telling D that the investigator said that the entire weeks (week of murder) time cards were missing. He also said that he was informed in the diner that Tuesday was usually the D's night off and the manager thought he did not work the night before the murder.

He also told me in regards Brenda Marsh in her claim that she moved to Ayer in May is wrong. His sister Betty Ann was married March 23, 1980. The D went to the wedding with Brenda and with two other people whose name he does not remember. Phyllis Loring babysat for the kids that day. Brenda also applied sometime in March to the WIC Program in Ayer at the YMCA.

Mar. 29 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 3/29/83.
Received from ADA Fahey copies of police reports re: John Weatherbee, Phyllis Loring, Pat Miles, Shirley Connors, Cathy Hale. Also time card of Charles Brow and a report of Nancy Taylor's.

Prepared motions for criminal records. Forwarded copies of above to Ray Morgan with letter, copy of which is in file.

Mar. 29 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/1/83.
The D called. I told him of the additional statements and from whom they came. He said that in regards to Weatherbee who was living with Pat Miles, he was always punching her around and one day Pat Miles called him for help and he punched Weatherbee out.

Mar. 30 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/1/83.
D called. He said there was a Beth Armstrong who was a friend of the D's brother Leroy and his sister Caroline. It was she that introduced the D to Brenda Marsh. She knows apparently of Brenda's drug addition, drug problems and knows her not to be a truthful person. Caroline lives in Providence. She is 27 and single. Her telephone number is 401-885-3218.

He also said that he left Brenda late in 1979 and went to Ayer and she at that time got a restraining order against him.

Apr. 1 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/4/83.
D called 4/1/83. The infamous swimming pool was bought in Child's World in Fitchburg. All of the records according to the D are in Leominster. He said that it was a \$99.00 pool and the tax brought it to \$102.00. He said that it was setup so that when he bought it, he drove around back, picked the pool up and had to sign for it.

Apr. 5 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/5/83.
As a result of the D's call this date received, called Ray Morgan and requested that he locate the manager of the diner at the time of the murder. According to the D, this man would be able to verify that he did in fact work the night before the killing because he, the manager, came in to relieve the D. He would also testify that the D and Brenda came into the diner after their court appearance. He said he should remember because they ordered hamburgers and french fries and Brenda did nothing but complain about the french fries. Tunney said he would be happy to do this.

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Apr. 5 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/5/83.
Spoke to Pamela Waters who informed me that ADA Fahey and Nancy Taylor and one other person were in Providence yesterday speaking to a Linda Tench who at one time claimed the D broke into her home. That matter was dismissed, and in speaking to Tench, they got the name of Rosann Baggerson Perry who apparently was beaten once or twice by the D. She said that both girls have long criminal records.

Spoke briefly to ADA Fahey after this. She said they really didn't intimidate anyone. They really did not speak to Perry, were unable to find her..

We also conferenced this matter with Judge Mitchell since he has not assigned a judge. If we go on the 19th of this month, it would be with a J. Sheehan who is brand new. With that in mind, we agreed on a May 2nd, 1983 date with J. Keady. ADA Fahey then gave me the missing pages from the probable cause hearing and a list of witnesses most of whom will not be called.

Apr. 11 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/11/83.
My motion for criminal records was allowed. Commonwealth's motion of defense witnesses if any and reciprocal discovery was allowed.

Apr. 12 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/11/83.
D insists that someone told him that the records pertaining to his buying the pool in April of 1980 would be in Leominster, Child World in Leominster. Went to Leominster today, checked with the downtown store Merchant's association. Child world does not have a store or office in Leominster. Their only local area is Fitchburg. I went to Fitchburg and spoke to the manager of Child World Mr. Cheraton. He said that he had been contacted by the police and by our investigator. He said that he did not have a record of it, that the D was quite correct when he said he had to go around the back of the building to pick it up, but he said he did not have to sign anything. He said that when they go around the back, the warehouse man would take the receipts that the customer had, would stamp them both, keep one and return the other to the customer. He said there was a pool on sale for \$99.00 that was about 12 foot diameter and 3 feet in height.

Apr. 21 Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/22/83.
I was curious about arrest and people involved. He was first arrested on May 22 by Boisseau and Jack Dwyer of the State Police. That was about 9:00 in the morning. Brenda was with him and said to the cops at that time "you can't blame this on him". "He was with me." He gave a statement that day to the police which is dated February 2 rather than May 22.

The next time the cops got him was on the default warrant on the case that he was in court on May 21. On the way up from Providence Boisseau suggested a stress test. It was given by Boisseau the same day and he passed it. He was released and returned to Providence in January or February of 1981. Some two weeks before he was in the Adult Correction Institute awaiting trial on the Tench assault. That came about because Tench was known as a pushover and the D took Billy with him to see her. When they got to the house, she had a boyfriend there and came out swinging a bat. The boyfriend jumped Billy and the D took the bat away from Tench and may have broken her arm when doing that. He then went to the detox. He spent Christmas and New years there. He was in Project Rise which apparently is a tough program.

When he went to court on the assault, he had no faith in the lawyer appointed to him and borrowed money from his sister Betty Ann and went to his uncle's house in Iowa, Council Bluffs. His uncle's name is Lyle Bernside. He stayed about two weeks, was drinking a lot, and left. His uncle gave him \$5.00 and he hitched a ride with a truck driver who is now the dispatcher for the F&H Trucking Co. in Salt Lake City, Utah. That drive took him through Colorado, California and into Arizona. He then went into the Self-Help Program in Phoenix at 4632

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Apr. 21
(Cont)

Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 4/22/83.
and then moved in with a girl...

He used to prepare the grandfathers breakfast every morning. If he didn't, the grandfather would tell Phyllis Loring.

The swimming pool that Brenda claims costs \$200.00 or \$300.00 was sold by the D to the brother John for \$50.00. His ex-wife Michelle can testify as to when the pool was purchased.

He said that Rosanne Perry has been trouble to the Waters family for years. Has been sleeping with his brothers John and Leroy and that any information she has comes from Kathy Brooks.

He said the only time he ever hit Brenda was the time he found maggots in the diapers of the baby. He said that night the police came, arrested the D, but did not take Brenda to a hospital nor did she seek any treatment.

May 2

Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 5/12/83.
Impanelled a jury. Took a view.

May 3

Bernard E. Bradley, Atty.: Barbara Hodgkins, Secy. Dict. 5/12/83.
Pretrial. DA moved in limine to prevent defense from using stress test given D by the Ayer police. Motion under advisement and allowed..

The trial went along, witnesses pretty close to their statements in the file.

I took no objection to the judges charge, seemed to be ok.

Objected to prosecutions arguments. Received curative instructions on two occasions and on one open court he instructed the jury to disregard.

May 11

Jury deliberated about nine hours and returned verdict of G, murder in the 1st degree, and armed robbery.

Case sent to appeals division...